

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0731
Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot 15 DP 9561, 17 Tutus Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Modification of Development Consent DA121/2011 granted for demolition of existing, construction of a new two 2 level dwelling basement level including a double garage terraces cabana swimming pool and landscaping
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Applicant:	Designed 2 You

Application Lodged:	29/01/2025
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	07/02/2025 to 21/02/2025
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The application seeks to modify Development Application DA0121/2011 with the following changes:

Ground Floor Level:

- Bedroom 1 Extension: Extend Bedroom 1 by 1.9 meters towards the rear of the property.
- Window Adjustments:
 - Relocate Window No. 09.
 - Add an additional window (Window No. 08a) in Bedroom 1.
 - Rename Window No. 08 to Window No. 08b.
- Privacy Screen: Move privacy screen to the retaining wall in lieu of positioning it along the external stair.

First Floor Level:

- Internal Layout Modifications:
 - Convert the existing walk-in robe (WIR) and en-suite into a casual living room.
 - Relocate the walk-in robe behind the master bedroom.
 - Move the en-suite to the study room.
- Balcony Adjustments:
 - Add a balcony extending from the casual living room.
 - Install a Juliette balcony extending from the master bedroom.
- Window and Door Revisions:
 - Expand Window No. 29 by 500mm and reposition it to the center of the room.
 - Reduce the size of Window No. 26.
 - Relocate Window No. 28.
 - Add a new door to the master bedroom for direct backyard access.
- Master Bedroom Rear Wall: Extend the rear wall to align with the deck edge, converting the deck area into part of the master bedroom.
- Roof and Cladding:
 - Install new roofing over the balcony and master bedroom, ensuring seamless integration with the existing roof structure and maintaining approved roof heights.
 - Apply new cladding where specified.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot 15 DP 9561 , 17 Tutus Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject site consists of one allotment located on the western side of Tutus Street, Balgowlah Heights. The site is regular in shape with a frontage of 15.24m along Tutus Street and a depth of 67.055m. The site has a surveyed area of 1,021m². The site is located within the R2 Low Density Residential zone and accommodates a three-storey detached dwelling under construction (as approved under DA0121/2011). The site slopes approximately 3m at the front, and approximately 2m at the rear. The subject site does not contain any significant vegetation. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by detached dwelling houses of varying heights. Site Inspection A site inspection was undertaken 27 February 2025.

Map:



SITE HISTORY

Development application DA0121/2011 was determined 17 November 2011 and Modification Mod2020/0092 was approved 1 May 2020.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA0121/2011, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact, as the proposed modifications are minor, external, and do not alter the approved building envelope.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA0121/2011, as the proposed modifications are minor, external, and ancillary to the approved use as a dwelling house.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.

Section 4.55(1A) - Other Modifications	Comments
plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent

Section 4.15 'Matters for Consideration'	Comments
	authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition in the original consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the previous modification (Mod2020/0092) application (prepared by Bushfire Consultancy Australia, dated 3.3.2020) stating that the development conforms

to the relevant specifications and requirements within Planning for Bush Fire Protection. A condition is recommended requiring an updated bushfire report and certificate to be provided prior to the release of the construction certificate.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 07/02/2025 to 21/02/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Geoffrey Alan Kennedy Mrs Isabel Marjorie Kennedy	13 Tutus Street BALGOWLAH HEIGHTS NSW 2093

The following issues were raised in the submissions:

- Compliance with Councils building regulations

The above issues are addressed as follows:

- **Compliance with Councils building regulations**
One submission was received stating that they have no objections to the proposal as long as they adhere to Councils building regulations.
Comment:
The application has been assessed against the MLEP and MDCP and it has been found that the proposed works are consistent with the requirements and objects of the relevant controls.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	05/02/2024: No objections are raised to the proposed modifications. No modifications to Development Engineering conditions required. Existing Development Engineering conditions for DA2011/121 and MOD2020/0092 are considered to still be relevant and adequate. The proposal is therefore supported.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A1780601 dated 21 January 2025).

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Manly Local Environmental Plan 2013

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.8m	No change	N/A	Yes
Floor Space Ratio	FSR: 0.4:1	FSR: 0.4:1	FSR: 0.4:1	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

6.9 Foreshore scenic protection area

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,
- (b) measures to protect and improve scenic qualities of the coastline,
- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,
- (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

Comment:

The subject site is within the foreshore scenic protection area and is not foreshore land. The proposed development:

- does not unreasonably impact upon the visual amenity of the foreshore and surrounds, and does not result in view loss from a public place to the foreshore,
- is not closely visible from the coastline, so does not impact upon its scenic quality,
- is suitable in its site context, and
- does not result in conflict between land-based and water-based coastal activities.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1021m²	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	N: 8m	7.5m	No change	Yes
	S: 8m	7.5m	No change	Yes
4.1.2.2 Number of Storeys	2/3	2/3	No change	Yes
4.1.4.1 Street Front Setbacks	6m	11.8m	No change	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 2.5m	2.2m	No change	Yes
	S: 2.5m	1.2m	1.2m - no change	Yes
	Windows - 3m	-	2.5m	No
4.1.4.4 Rear Setbacks	8m	17.435m	Xm	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	63%	62.1%	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	42.9%	No change	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	643m ²	No change	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	2 spaces	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

4.1.4 Setbacks (front, side and rear) and Building Separation

Clause 4.1.4.6 of the DCP stipulates that all new windows from habitable dwellings that face the side boundary are to be setback at least 3m from side boundaries. The proposal will result in a change to window W-26 on the southern elevation. The change to window W-26 is not expected to adversely impact on the amenity of the subject site or neighbouring property. The change window involves reducing the size and obscure glazing.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2024/0731 for Modification of Development Consent DA121/2011 granted for demolition of existing, construction of a new two 2 level dwelling basement level including a double garage terraces cabana swimming pool and landscaping on land at Lot 15 DP 9561, 17 Tutus Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-500750# - Mod2024/0731#	The date of this notice of determination	Section 4.55 (1a) Minor Environmental Impact - Modification of Development Consent DA121/2011 granted for demolition of existing, construction of a new two 2 level dwelling basement level including a double garage terraces cabana swimming pool and landscaping - Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation. - Add Condition 19A Bushfire Risk Assessment
Mod2020/0092#	01/05/2020	Modification of Development Consent DA121/2011 granted for demolition of existing construction of a new two 2 level dwelling basement level including a double garage terraces cabana swimming pool and landscaping - Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation - Add Condition 1B Compliance with Other Department, Authority or Service Requirements - Add Condition ANS14 Front Fence - Add Condition ANS15 Boundary Fencing - Add Condition ANS16 Northern Ground Floor Deck - Add Condition 54 Air Conditioner Noise

Modified conditions

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation, to read as follows:

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
S-101	D	Proposed Basement Floor Plan	Designed 2 You	18.12.2024

S-102	D	Proposed Ground Floor Plan	Designed 2 You	18.12.2024
S-103	D	Proposed First Floor Plan	Designed 2 You	18.12.2024
S-104	D	Proposed Roof, Stormwater & Site Plan	Designed 2 You	18.12.2024
S-105	D	Proposed Elevations (East and West)	Designed 2 You	18.12.2024
S-106	D	Proposed Elevations (North and South)	Designed 2 You	18.12.2024
S-107	D	Proposed Section AA, BB & Driveway	Designed 2 You	18.12.2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	Certificate number: A1780601	DESIGNED 2 YOU PTY LTD	21 January 2025

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

B. Add Condition 19A Geotechnical Report and Bushfire Risk Assessment to read as follows:

An updated Bushfire Risk Assessment is required that is relevant to the development as modified. Alternatively, a letter may be provided from the original author of the report/s stating that the recommendations of the original reports, are still current for the proposed modification.

The updated reports/letters are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk and bushfire risk is mitigated appropriately.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Julie Edwards, Planner

The application is determined on 11/03/2025, under the delegated authority of:



Rodney Piggott, Manager Development Assessments